

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ALAA AREF AL-JELAIHAWI,

Plaintiff,

v.

PROGRESSIVE INSURANCE  
COMPANIES,

Defendant.

CASE NO. 2:20-CV-1855-DWC

ORDER ON CROSS MOTIONS FOR  
SUMMARY JUDGMENT

Currently before the Court is Plaintiff Alaa Aref Al-Jelaihawi's Motion for Summary Judgment and Defendant United Financial Casualty Company's<sup>1</sup> Response to Plaintiff's Motion for Summary Judgment and Cross-Motion for Summary Judgment. Dkt. 29, 30.<sup>2</sup>

**I. Background**

Plaintiff alleges he overpaid on an insurance policy issued to Plaintiff's trucking company by Defendant. Dkt. 1. Plaintiff states his premiums increased drastically over a span of

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<sup>1</sup> Plaintiff's Complaint names Progressive Insurance Companies as the defendant. *See* Dkt. 1. "Progressive Insurance Companies is a non-existent corporation and United Financial Casualty Company (UFCC) is the proper defendant." Dkt. 34 at fn.1.

<sup>2</sup> Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. Dkt. 14.

three years “with virtually ze[r]o losses to account for.” *Id.* at 5. Plaintiff contends that, after he began investigating the rate increases, his policy was cancelled and he could not continue his business. *Id.* While unclear, Plaintiff appears to contend Defendant is liable under theories of breach of contract, negligence, and bad faith. *Id.*

Plaintiff filed a Motion for Summary Judgment on January 6, 2022. Dkt. 29. Defendant filed the Response to Plaintiff’s Motion for Summary Judgment and Cross-Motion for Summary Judgment on January 18, 2022. Dkt. 30, 21 (supporting evidence). On February 11, 2022, Defendant filed a Reply. Dkt. 34. Plaintiff filed an untimely Response to Defendant’s Cross-Motion for Summary Judgment on January 15, 2022. Dkt. 35.<sup>3</sup> The parties did not request oral argument and the Court has considered the record and finds this matter can be resolved on the record without oral argument.

## II. Standard of Review

Summary judgment is proper only if the pleadings, discovery, and disclosure materials on file, and any affidavits, show that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of a claim in the case on which the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must present specific, significant probative evidence, not simply “some

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<sup>3</sup> Defendant did not object to Plaintiff’s Response. Therefore, the Court has considered the Response in ruling on the Motions.

1 metaphysical doubt”); *see also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a  
 2 material fact exists if there is sufficient evidence supporting the claimed factual dispute,  
 3 requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*,  
 4 477 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d  
 5 626, 630 (9th Cir. 1987).

### 6 **III. Discussion**

7 Both Plaintiff and Defendant seek summary judgment on Plaintiff’s breach of contract  
 8 claim. Dkt. 29, 30. Defendant also argues it is entitled to summary judgment as to Plaintiff’s  
 9 negligence claim and any other claim asserted in the Complaint. Dkt. 30.

#### 10 **A. Evidence**

11 The evidence shows S&A Transportation LLC DBA Dave’s Towing and Transport  
 12 (“S&A”) was owned by Plaintiff, his brother, and his mother. Dkt. 31-1 at 5 (Plaintiff Depo.).  
 13 Plaintiff was the individual “mostly . . . handling insurance in [the] company.” *Id.* at 7. S&A was  
 14 insured by Defendant from March 24, 2015 through March 24, 2020. *See* Dkt. 31-2 – Dkt. 31-52.  
 15 Throughout the five-year period that Defendant insured S&A, S&A made multiple changes to  
 16 the policy – such as adding and removing vehicles and drivers – resulting in changes to the  
 17 amount of the policy premium. *See* Dkt. 31.<sup>4</sup> Defendant also sent several notices of cancellations  
 18 to S&A because S&A failed to submit timely payments. *Id.*<sup>5</sup> After S&A received each  
 19 cancellation notification, S&A paid the premium amount due and the policy was reinstated  
 20 without a lapse in coverage. *Id.*

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22 <sup>4</sup> Dkt. 31-2, 31-3, 31-4, 31-6, 31-7, 31-9, 31-11, 31-12, 31-13, 31-14, 31-15, 31-17, 31-18, 31-19, 31-21,  
 23 31-22, 31-23, 31-24, 31-26, 31-27, 31-28, 31-30, 31-31, 31-32, 31-33, 31-34, 31-35, 31-36, 31-37, 31-40, 31-42, 31-  
 43, 31-44, 31-46, 31-47, 31-49, 31-50.

24 <sup>5</sup> Dkt. 31-5, 31-8, 31-10, 31-16, 31-20, 31-38, 31-39, 31-45, 31-48.

1 On January 30, 2020, Defendant mailed S&A a Notice of Cancellation, Nonrenewal or  
2 Declination of Insurance (“Notice of Cancellation”) stating that Defendant would not renew  
3 S&A’s insurance policy. Dkt. 31-52. The Notice of Cancellation stated S&A did not meet  
4 Defendant’s acceptability criteria because S&A’s current drivers list was not received, was  
5 incomplete, or was invalid. *Id.* S&A’s insurance policy expired on March 24, 2020.

6 B. Breach of Contract

7 Plaintiff appears to assert a claim for breach of contract. *See* Dkt. 1. To establish breach  
8 of contract claim, Plaintiff must allege: (1) the existence of a valid contract; (2) breach of that  
9 contract; and (3) resulting damages. *See Storti v. Univ. of Wash.*, 181 Wash.2d 28, 35 (2014).

10 *Valid Contract.* Plaintiff states Defendant breached a contract between Plaintiff and  
11 Defendant that required Defendant to act in good faith and treat Plaintiff fairly. Dkt. 31-1 at 25  
12 (Plaintiff Depo.). S&A, Plaintiff’s company, was insured by Defendant from March 2015  
13 through March 2020. Plaintiff, however, does not contend a provision of the insurance policy is  
14 at issue. *See* Dkt. 1. In fact, Plaintiff testified there is no contractual document on which he is  
15 basing his claim. Dkt. 31-1 at 25 (Plaintiff Depo.). Based on the evidence before the Court, the  
16 Court cannot identify a valid contract between Plaintiff and Defendant that gives rise to this  
17 litigation.

18 *Breach of Contract.* As there is no valid contract, there is no evidence Defendant  
19 breached a contract. However, assuming Plaintiff is asserting that Defendant failed to perform  
20 under the insurance policy, the claim fails. A breach of contract claim must indicate which  
21 provision of the contract was breached. *Elliott Bay Seafoods, Inc. v. Port of Seattle*, 124 Wn.  
22 App. 5, 12 (2004). As stated above, Plaintiff has not identified any provision of a contractual  
23 agreement between Plaintiff and Defendant that Defendant breached. Moreover, the evidence  
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1 shows Defendant insured Plaintiff's business from March 2015 through March 2020. *See* Dkt.  
2 31. Throughout the period of coverage, S&A made multiple changes to the policy. For example,  
3 S&A added and removed drivers and added and removed vehicles from the policy. As a result of  
4 the policy changes, S&A's policy premium amounts fluctuated. In January of 2020, Defendant  
5 provided the Notice of Cancellation to S&A informing S&A the insurance policy would not be  
6 renewed. The evidence fails to show Defendant breached any contract by adjusting S&A's  
7 insurance premium amounts when Plaintiff made changes to the policy or by declining to renew  
8 the insurance policy. Therefore, there is no evidence Defendant breached any contract between  
9 Plaintiff and Defendant.

10 *Damages.* The evidence fails to show a valid contract between Plaintiff and Defendant  
11 was breached by Defendant. Therefore, the Court declines to determine if there is sufficient  
12 evidence showing damages to survive summary judgment. Regardless, the Court notes that  
13 Plaintiff alleged he was forced to close his business because he lost insurance. Dkt. 1. However,  
14 Plaintiff testified that his assessment of his damages is arbitrary. *See* Dkt. 31-1 at 26 (Plaintiff  
15 Depo.). Thus, Plaintiff has not submitted sufficient evidence to show Plaintiff was actually  
16 damaged as a result of any alleged breach of contract.

17 *Conclusion.* The evidence fails to show there was a valid contract between Plaintiff and  
18 Defendant that was breached by Defendant. Therefore, Defendant is entitled to summary  
19 judgment on the breach of contract claim.

20 C. Negligence

21 Plaintiff also alleges Defendant was negligent based on Plaintiff's interactions with  
22 Defendant's employees at one of Defendant's call centers. *See* Dkt. 31-1 at 23 (Plaintiff Depo.).  
23 A party claiming negligence must prove (1) duty, (2) breach, (3) causation, and (4) injury.  
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1 *Wellman & Zuck, Inc. v. Hartford Fire Ins. Co.*, 170 Wash. App. 666, 680 (2012). Plaintiff has  
 2 not alleged and the record does not reflect Defendant breached a duty to Plaintiff based on  
 3 Plaintiff's interactions with a call center. In fact, there is no explanation of what duty Defendant  
 4 owed Plaintiff. Furthermore, there are no allegations or evidence showing Plaintiff suffered an  
 5 injury as a result of his interactions with Defendant's employees at a call center. Therefore, there  
 6 is no evidence Defendant acted negligently. Accordingly, Defendant is entitled to summary  
 7 judgment as to Plaintiff's negligence claim. *See Dombrosky v. Farmers Ins. Co. of Washington*,  
 8 84 Wash. App. 245, 260–61, (1996), *as amended* (Feb. 7, 1997) (finding the plaintiff failed to  
 9 provide specific evidence to establish the elements of negligence and stating "[m]ere  
 10 unsupported assertions will not defeat a summary judgment motion").

#### 11 D. Bad Faith

12 The Complaint also appears to allege Defendant is liable under theories of unethical  
 13 policy practice, twisting, misrepresentation, and operation in bad faith. Dkt. 1 at 5. As Plaintiff  
 14 has not provided any explanation as to these claims, the Court interprets the claims to be alleging  
 15 that Defendant acted in bad faith.

16 An insurer has a duty of good faith to its policyholder and violation of that duty may give  
 17 rise to a tort action for bad faith. *Truck Ins. Exch. v. Vanport Homes, Inc.*, 147 Wash.2d 751, 765  
 18 (2002). Claims by insureds against their insurers for bad faith are analyzed applying the same  
 19 principles as any other tort: duty, breach of that duty, and damages proximately caused by any  
 20 breach of duty. *See Safeco Ins. Co. v. Butler*, 118 Wash.2d 383, 388 (1992). To succeed on a bad  
 21 faith claim, the policyholder must show the insurer's breach of the insurance contract was  
 22 unreasonable, frivolous, or unfounded. *Overton v. Consol. Ins. Co.*, 145 Wash.2d 417, 433  
 23 (2002). Here, as discussed above, there is no evidence Defendant breached the insurance contract  
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1 or breached any duty owed to Plaintiff. As there is no evidence (or allegations) showing  
2 Defendant breached a duty owed to Plaintiff, Defendant is entitled to summary judgment on  
3 Plaintiff's bad faith claim.

4 **IV. Conclusion**

5 Based on the record before the Court, the evidence fails to create a genuine issue of  
6 material fact showing Defendant is liable under the theories of breach of contract, negligence, or  
7 bad faith. Therefore, Plaintiff's Motion for Summary Judgment (Dkt. 29) is denied, Defendant's  
8 Cross-Motion for Summary Judgment (Dkt. 30) is granted, and this case is closed.

9 Dated this 22nd day of February, 2022.

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12 David W. Christel  
13 United States Magistrate Judge  
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